

SENATE BILL NO. 479

INTRODUCED BY D. HARGROVE

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING LOCAL GOVERNMENTS TO ADOPT SUBDIVISION REGULATIONS THAT PROMOTE CLUSTER DEVELOPMENT AND PRESERVATION OF OPEN SPACE; ESTABLISHING ADDITIONAL PURPOSES FOR SUBDIVISION REGULATIONS; DEFINING "CLUSTER DEVELOPMENT"; AUTHORIZING LOCAL GOVERNMENTS TO AUTHORIZE CERTAIN EXEMPTIONS FROM SUBDIVISION REGULATIONS AND PROCEDURES FOR CLUSTER DEVELOPMENTS THAT PRESERVE OPEN SPACE; REQUIRING THE DEPARTMENT OF COMMERCE TO DEVELOP EXAMPLES OF SUBDIVISION REGULATIONS THAT PROMOTE CLUSTER DEVELOPMENT AND TO PROVIDE TECHNICAL ASSISTANCE WITH THE DEVELOPMENT OF CLUSTER DEVELOPMENT REGULATIONS; AMENDING SECTIONS 17-6-505, 76-3-102, 76-3-103, 76-3-503, 76-3-504, 76-3-608, 76-3-621, AND 90-1-103, MCA; AND PROVIDING EFFECTIVE DATES."

WHEREAS, agricultural land is increasingly being taken out of production for development and becoming unavailable for production of food; and

WHEREAS, farmers and ranchers are often forced to sell their land to generate sufficient income to retire; and

WHEREAS, cluster development can facilitate the preservation of Montana's unique landscape; and

WHEREAS, cluster development can reduce local government costs for infrastructure and provision of services by concentrating building sites on smaller lots so that services and utilities can be concentrated in a smaller area; and

WHEREAS, the Montana Department of Commerce is charged with providing technical assistance and information related to community development; and

WHEREAS, local governments need mechanisms to encourage development approaches that minimize costs to local citizens and that promote effective and efficient provision of public services.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 17-6-505, MCA, is amended to read:

1 **"17-6-505. Rulemaking authority.** The department shall adopt rules to implement the provisions
2 of this part, including rules:

3 (1) determining the amount of interest and the method of computation and payment of interest
4 charged to recipients of job investment loans and specifying amortization schedules and other terms and
5 conditions for job investment loans as necessary. The rate of interest charged on a loan may not be less
6 than the prevailing market rate.

7 (2) establishing criteria for determining nonperformance and declaring default for a job investment
8 loan;

9 (3) specifying security and collateral requirements that must be met as a condition of receiving
10 a job investment loan;

11 (4) encouraging financial institutions to participate to the greatest extent possible in the financing
12 of job investment projects;

13 (5) requiring that the job investment loan may not exceed the funding provided by private lenders
14 and that at least one private lender must be a financial institution. The board shall secure the most
15 favorable collateral position possible on any job investment loan.

16 (6) establishing appropriate loan loss reserves; and

17 (7) providing for an application process and a loan review process that:

18 (a) incorporate the funding criteria adopted by the department to implement the federal community
19 development block grant program pursuant to 90-1-103~~(5)~~;

20 (b) minimize the amount of Job Investment Act funds required; and

21 (c) require financial institution review and contingent approval of the project before Job Investment
22 Act funds are committed."

23
24 **Section 2.** Section 76-3-102, MCA, is amended to read:

25 **"76-3-102. Statement of purpose.** It is the purpose of this chapter to:

26 (1) promote the public health, safety, and general welfare by regulating the subdivision of land;

27 (2) prevent overcrowding of land;

28 (3) lessen congestion in the streets and highways;

29 (4) provide for adequate light, air, water supply, sewage disposal, parks and recreation areas,
30 ingress and egress, and other public requirements;

- 1 (5) require development in harmony with the natural environment;
- 2 (6) promote preservation of open space;
- 3 (7) promote cluster development approaches that minimize costs to local citizens and that promote
- 4 effective and efficient provision of public services;
- 5 ~~(6)~~(8) protect the rights of property owners; and
- 6 ~~(7)~~(9) require uniform monumentation of land subdivisions and transferring interests in real
- 7 property by reference to a plat or certificate of survey."
- 8

9 **Section 3.** Section 76-3-103, MCA, is amended to read:

10 **"76-3-103. Definitions.** As used in this chapter, unless the context or subject matter clearly

11 requires otherwise, the following definitions apply:

12 (1) "Certificate of survey" means a drawing of a field survey prepared by a registered surveyor

13 for the purpose of disclosing facts pertaining to boundary locations.

14 (2) "Cluster development" means a subdivision with lots clustered in a group of five or more lots

15 that is designed to concentrate building sites on smaller lots in order to reduce capital and maintenance

16 costs for infrastructure through the use of concentrated public services and utilities, while allowing other

17 lands to remain undeveloped.

18 ~~(2)~~(3) "Dedication" means the deliberate appropriation of land by an owner for any general and

19 public use, reserving to the landowner no rights that are incompatible with the full exercise and enjoyment

20 of the public use to which the property has been devoted.

21 ~~(3)~~(4) "Division of land" means the segregation of one or more parcels of land from a larger tract

22 held in single or undivided ownership by transferring or contracting to transfer title to or possession of a

23 portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of

24 the segregated parcels pursuant to this chapter. The conveyance of a tract of record or an entire parcel

25 of land that was created by a previous division of land is not a division of land.

26 ~~(4)~~(5) "Examining land surveyor" means a registered land surveyor appointed by the governing

27 body to review surveys and plats submitted for filing.

28 ~~(5)~~(6) "Final plat" means the final drawing of the subdivision and dedication required by this

29 chapter to be prepared for filing for record with the county clerk and recorder and containing all elements

30 and requirements set forth in this chapter and in regulations adopted pursuant to this chapter.

~~(6)~~(7) "Governing body" means a board of county commissioners or the governing authority of a city or town organized pursuant to law.

~~(7)~~(8) "Immediate family" means a spouse, children by blood or adoption, and parents.

~~(8)~~(9) "Irregularly shaped tract of land" means a parcel of land other than an aliquot part of the United States government survey section or a United States government lot, the boundaries or areas of which cannot be determined without a survey or trigonometric calculation.

~~(9)~~(10) "Planned unit development" means a land development project consisting of residential clusters, industrial parks, shopping centers, or office building parks that compose a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.

~~(10)~~(11) "Plat" means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications.

~~(11)~~(12) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a governing body.

~~(12)~~(13) "Registered land surveyor" means a person licensed in conformance with Title 37, chapter 67, to practice surveying in the state of Montana.

~~(13)~~(14) "Registered professional engineer" means a person licensed in conformance with Title 37, chapter 67, to practice engineering in the state of Montana.

~~(14)~~(15) "Subdivider" means a person who causes land to be subdivided or who proposes a subdivision of land.

~~(15)~~(16) "Subdivision" means a division of land or land so divided that it creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and further includes a condominium or area, regardless of its size, that provides or will provide multiple space for recreational camping vehicles or mobile homes.

~~(16)~~(17) (a) "Tract of record" means an individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office.

(b) Each individual tract of record continues to be an individual parcel of land unless the owner of the parcel has joined it with other contiguous parcels by filing with the county clerk and recorder:

(i) an instrument of conveyance in which the aggregated parcels have been assigned a legal description that describes the resulting single parcel and in which the owner expressly declares the owner's intention that the tracts be merged; or

(ii) a certificate of survey or subdivision plat that shows that the boundaries of the original parcels have been expunged and depicts the boundaries of the larger aggregate parcel.

(c) An instrument of conveyance does not merge parcels of land under subsection ~~(16)(b)(i)~~ (17)(b)(i) unless the instrument states, "This instrument is intended to merge individual parcels of land to form the aggregate parcel(s) described in this instrument" or a similar statement, in addition to the legal description of the aggregate parcels, clearly expressing the owner's intent to effect a merger of parcels."

Section 4. Section 76-3-503, MCA, is amended to read:

"76-3-503. Hearing on proposed regulations. Before the governing body adopts subdivision regulations pursuant to 76-3-501 or [section 6], it shall hold a public hearing ~~thereon~~ on the regulations and shall give public notice of its intent to adopt ~~such~~ the regulations and of the public hearing by publication of notice of the time and place of the hearing in a newspaper of general circulation in the county not less than 15 or more than 30 days prior to the date of the hearing."

Section 5. Section 76-3-504, MCA, is amended to read:

"76-3-504. ~~Minimum requirements for subdivision~~ Subdivision regulations -- contents. (1) The subdivision regulations adopted under this chapter must, at a minimum:

~~(1)(a)~~ (a) except as provided in 76-3-210, [section 6], or 76-3-609(3), require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

~~(2)(b)~~ (b) establish procedures consistent with this chapter for the submission and review of subdivision plats;

~~(3)(c)~~ (c) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

~~(4)(d)~~ (d) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development and prohibit subdivisions in these areas unless the hazards can

1 be eliminated or overcome by approved construction techniques;

2 ~~(5)(e)~~ prohibit subdivisions for building purposes in areas located within the floodway of a flood
3 of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the
4 governing body;

5 ~~(6)(f)~~ prescribe standards for:

6 ~~(a)(i)~~ the design and arrangement of lots, streets, and roads;

7 ~~(b)(ii)~~ grading and drainage;

8 ~~(c)(iii)~~ subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal
9 that, at a minimum, meet the regulations adopted by the department of environmental quality under
10 76-4-104;

11 ~~(d)(iv)~~ the location and installation of utilities;

12 ~~(7)(g)~~ provide procedures for the administration of the park and open-space requirements of this
13 chapter;

14 ~~(8)(h)~~ provide for the review of preliminary plats by affected public utilities and those agencies of
15 local, state, and federal government having a substantial interest in a proposed subdivision. A utility or
16 agency review may not delay the governing body's action on the plat beyond the time limits specified in
17 this chapter, and the failure of any agency to complete a review of a plat may not be a basis for rejection
18 of the plat by the governing body.

19 ~~(9)(i)~~ require the subdivider to establish ditch easements in the subdivision, in locations of
20 appropriate topographic characteristics and sufficient width, to allow the physical placement and
21 unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation
22 to persons and lands legally entitled to the water under an appropriated water right or permit of an
23 irrigation district or other private or public entity formed to provide for the use of the water right on the
24 subdivision lots. Establishment of easements pursuant to this subsection ~~(9)~~ (1)(i) is not required if:

25 ~~(a)(i)~~ the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner
26 acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as
27 irrigated land and may continue to be assessed for irrigation water delivery even though the water may
28 not be deliverable; or

29 ~~(b)(ii)~~ the water rights are removed or the process has been initiated to remove the water rights
30 from the subdivided land through an appropriate legal or administrative process and if the removal or

intended removal is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

~~(10)(i)~~ require the subdivider, unless otherwise provided for under separate written agreement or filed easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights.

(2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted under [section 6] and this section may include provisions that are consistent with this section that promote cluster development."

NEW SECTION. Section 6. Local option cluster development regulations and exemptions authorized. (1) If the governing body has adopted a growth policy that meets the requirements of 76-1-601, the governing body may adopt regulations to promote cluster development and preserve open space under this section.

(2) Regulations adopted under this section must:

(a) establish a maximum size for each parcel in a cluster development;

(b) subject to subsection (3)(d), establish a maximum number of parcels in a cluster development;

and

(c) establish requirements, including a minimum size for the area to be preserved, for preservation of open space as a condition of approval of a cluster development subdivision under regulations adopted pursuant to this section. The regulations must require that open space be preserved through:

~~—— (i) an irrevocable conservation easement, granted in perpetuity, as provided for in Title 76, chapter 6, prohibiting further division of the parcel; or~~

~~—— (ii) a deed restriction, running with the land, prohibiting further division of the parcel.~~

(3) Regulations adopted under this section may:

(a) establish a shorter timeframe for review of proposed cluster developments;

(b) establish procedures and requirements that provide an incentive for cluster development

- 1 subdivisions that are consistent with the provisions of this chapter;
- 2 (c) authorize the review of a division of land that involves more than one existing parcel as one
- 3 subdivision proposal for the purposes of creating a cluster development;
- 4 (d) authorize the creation of one clustered parcel for each existing parcel that is reviewed as
- 5 provided in subsection (3)(c); and
- 6 (e) establish exemptions from the following:
- 7 (i) the requirements of an environmental assessment pursuant to 76-3-603;
- 8 (ii) review of the criteria in 76-3-608(3)(a); and
- 9 (iii) park dedication requirements pursuant to 76-3-621.
- 10 (4) Except as provided in this section, the provisions of this chapter apply to cluster development
- 11 subdivisions.

12

13 **Section 7.** Section 76-3-608, MCA, is amended to read:

14 **"76-3-608. Criteria for local government review.** (1) The basis for the governing body's decision

15 to approve, conditionally approve, or disapprove a subdivision is whether the preliminary plat, applicable

16 environmental assessment, public hearing, planning board recommendations, or additional information

17 demonstrates that development of the subdivision meets the requirements of this chapter. A governing

18 body may not deny approval of a subdivision based solely on the subdivision's impacts on educational

19 services.

20 (2) The governing body shall issue written findings of fact that weigh the criteria in subsection

21 (3), as applicable.

22 (3) A subdivision proposal must undergo review for the following primary criteria:

23 (a) except when the governing body has established an exemption pursuant to subsection (7) of

24 this section or except as provided in 76-3-505 and [section 6], the effect on agriculture, agricultural water

25 user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and

26 safety;

27 (b) compliance with:

28 (i) the survey requirements provided for in part 4 of this chapter;

29 (ii) the local subdivision regulations provided for in part 5 of this chapter; and

30 (iii) the local subdivision review procedure provided for in this part;

1 (c) the provision of easements for the location and installation of any planned utilities; and

2 (d) the provision of legal and physical access to each parcel within the subdivision and the required
3 notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

4 (4) The governing body may require the subdivider to design the subdivision to reasonably
5 minimize potentially significant adverse impacts identified through the review required under subsection
6 (3). The governing body shall issue written findings to justify the reasonable mitigation required under this
7 subsection (4).

8 (5) (a) In reviewing a subdivision under subsection (3) and when requiring mitigation under
9 subsection (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but
10 it is recognized that in some instances the unmitigated impacts of a proposed development may be
11 unacceptable and will preclude approval of the plat.

12 (b) When requiring mitigation under subsection (4), a governing body shall consult with the
13 subdivider and shall give due weight and consideration to the expressed preference of the subdivider.

14 (6) (a) When a minor subdivision is proposed in an area where a growth policy has been adopted
15 pursuant to chapter 1 and the proposed subdivision will comply with the growth policy, the subdivision
16 is exempt from the review criteria contained in subsection (3)(a) but is subject to applicable zoning
17 regulations.

18 (b) In order for a growth policy to serve as the basis for the exemption provided by this subsection
19 (6), the growth policy must meet the requirements of 76-1-601.

20 (7) The governing body may exempt subdivisions that are entirely within the boundaries of
21 designated geographic areas from the review criteria in subsection (3)(a) if all of the following requirements
22 have been met:

23 (a) the governing body has adopted a growth policy pursuant to chapter 1 that:

24 (i) addresses the criteria in subsection (3)(a);

25 (ii) evaluates the effect of subdivision on the criteria in subsection (3)(a);

26 (iii) describes zoning regulations that will be implemented to address the criteria in subsection
27 (3)(a); and

28 (iv) identifies one or more geographic areas where the governing body intends to authorize an
29 exemption from review of the criteria in subsection (3)(a); and

30 (b) the governing body has adopted zoning regulations pursuant to chapter 2, part 2 or 3, that:

- (i) apply to the entire area subject to the exemption; and
- (ii) address the criteria in subsection (3)(a), as described in the growth policy."

Section 8. Section 76-3-621, MCA, is amended to read:

"76-3-621. Park dedication requirement. (1) Except as provided in [section 6] or subsections (2), (3), and (6) of this section, a subdivider shall dedicate to the governing body a cash or land donation equal to:

- (a) 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;
- (b) 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and not larger than 1 acre;
- (c) 5% of the area of the land proposed to be subdivided into parcels larger than 1 acre and not larger than 3 acres; and
- (d) 2.5% of the area of the land proposed to be subdivided into parcels larger than 3 acres and not larger than 5 acres.

(2) When a subdivision is located totally within an area for which density requirements have been adopted pursuant to a growth policy under chapter 1 or pursuant to zoning regulations under chapter 2, the governing body may establish park dedication requirements based on the community need for parks and the development densities identified in the growth policy or regulations. Park dedication requirements established under this subsection are in lieu of those provided in subsection (1) and may not exceed 0.03 acres per dwelling unit.

(3) A park dedication may not be required for:

- (a) a minor subdivision;
- (b) land proposed for subdivision into parcels larger than 5 acres;
- (c) subdivision into parcels that are all nonresidential;
- (d) a subdivision in which parcels are not created, except when that subdivision provides permanent multiple spaces for recreational camping vehicles, mobile homes, or condominiums; or
- (e) a subdivision in which only one additional parcel is created.

(4) The governing body, in consultation with the subdivider and the planning board or park board that has jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park

dedication must be a land donation, cash donation, or a combination of both. When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation.

(5) (a) In accordance with the provisions of subsections (5)(b) and (5)(c), the governing body shall use the dedicated money or land for development, acquisition, or maintenance of parks to serve the subdivision.

(b) The governing body may use the dedicated money to acquire, develop, or maintain, within its jurisdiction, parks or recreational areas or for the purchase of public open space or conservation easements only if:

(i) the park, recreational area, open space, or conservation easement is within a reasonably close proximity to the proposed subdivision; and

(ii) the governing body has formally adopted a park plan that establishes the needs and procedures for use of the money.

(c) The governing body may not use more than 50% of the dedicated money for park maintenance.

(6) The local governing body shall waive the park dedication requirement if:

(a) (i) the preliminary plat provides for a planned unit development or other development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development; and

(ii) the area of the land and any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required under subsection (1);

(b) (i) the preliminary plat provides long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and

(ii) the area of the land proposed to be subdivided, by virtue of providing long-term protection provided for in subsection (6)(b)(i), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1); or

(c) the area of the land proposed to be subdivided, by virtue of a combination of the provisions of subsections (6)(a) and (6)(b), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1).

(7) For the purposes of this section:

(a) "cash donation" is the fair market value of the unsubdivided, unimproved land; and

(b) "dwelling unit" means a residential structure in which a person or persons reside."

Section 9. Section 90-1-103, MCA, is amended to read:

"90-1-103. Functions of department of commerce -- community development. (1) The department of commerce shall:

(1)(a) cooperate with and provide technical assistance to county, municipal, state, and regional planning commissions, zoning commissions, parks or recreation boards, community development groups, community action agencies, and similar agencies created for the purposes of aiding and encouraging orderly, productive, and coordinated development of the communities of the state;

(2)(b) assist the governor in coordinating the activities of state agencies that have an impact on solution of community development problems and implementation of community plans;

(3)(c) serve as a clearinghouse for information, data, and other materials that may be helpful or necessary to local governments to discharge their responsibilities and provide information on available federal and state financial and technical assistance;

(4)(d) carry out continuing studies and analyses of the problems faced by communities within the state and develop those recommendations for administrative or legislative action as appear necessary. In carrying out the studies and analyses and in providing technical assistance to communities, the department shall pay particular attention to the planning and financing of public facilities and to the problems of metropolitan, suburban, and other areas in which economic and population factors are rapidly changing.

(5)(e) administer the federal community development block grant program and adopt rules to implement the program.

(2) In partial fulfillment of its duties under subsection (1), BY JANUARY 1, 2003, the department shall ~~develop~~ HAVE DEVELOPED and ~~publish~~ PUBLISHED examples of subdivision regulations that provide incentives for and remove disincentives to cluster development. The examples need not be limited to the local option cluster development regulations authorized in [section 6] and may include any cluster development regulations that are authorized under Title 76, chapter 3. In developing the examples of regulations, the department shall seek the advice of interested parties. The department shall provide technical assistance to local governments that are developing cluster development regulations, as provided in subsection (1)(a)."

1

2 NEW SECTION. **Section 10. Codification instruction.** [Section 6] is intended to be codified as an
3 integral part of Title 76, chapter 3, part 5, and the provisions of Title 76, chapter 3, part 5, apply to
4 [section 6].

5

6 NEW SECTION. **Section 11. Effective dates.** (1) Except as provided in subsection (2), [this act]
7 is effective October 1, 2001.

8 (2) [Section 9 and this section] are effective on passage and approval.

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